

Prevention and Repression of Piracy and Armed Robbery at Sea

Contribution by Austria

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In reply to the International Law Commission's request in its Report of 2022, Chapter III.D, Austria would like to provide the following views and information:

1. Austria welcomes the inclusion of the topic „Prevention and repression of piracy and armed robbery at sea“ in the work programme of the International Law Commission. This topic is of particular relevance in light of the fact that piracy has not „faded away into the mists of history“ as had generally been believed for the greater part of the 20th century, including by the negotiators of the 1982 Convention on the Law of the Sea (UNCLOS). In recent decades the world has on the contrary witnessed a surge of piratical activities in various geographical regions, unprecedented in modern history. While during the past years piracy has been repressed to some extent it is still far from having been eliminated. A fresh look at the current rules of international law relating to this phenomenon thus seems highly useful as these rules permit action to be taken against pirates, but do not ensure that such action is effectively taken.
2. The effectiveness of the rules on piracy first codified in the 1958 Convention on the High Seas and later in Articles 100-107 UNCLOS has certainly suffered from their applicability only to the high seas and the exclusive economic zone. Many attacks against ships, however, take place when they are at anchor, berthed or transiting the territorial sea. It might therefore also be useful to consider elaborating specific legal rules regarding „armed robbery at sea“, perhaps based on a definition of such activities along the lines of the International Maritime Organisation (IMO) in its Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships.

It should also be reflected upon the fact that only Art. 100 UNCLOS imposes an explicit duty on states with respect to piracy by requiring them to cooperate „to the fullest possible extent“ in its repression, while Art. 105 UNCLOS only states that „every State may seize a pirate ship“. This would seem to indicate that the exercise of jurisdiction by the seizing state's courts is only a possibility and not an obligation. The view may nevertheless seem justified that in light of the duty enshrined in Art. 100 the suppression of piracy, besides being a right, is also an international duty. In any case, further clarification of this important question would be most welcome, in particular as Art. 100 offers no details on the nature of the required cooperation between states.

3. UNCLOS does not expressly oblige states to enact laws against piracy. In some instances, due to lack of appropriate anti-piracy legislation, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), which was meant to be an anti-terrorist Convention, has been applied to piratical activities. This application of the

SUA Convention may be considered a certain remedy as the motive of the person committing any of the offenses listed therein is not relevant. A link between that Convention and piracy has also been established by the United Nations Security Council, for the first time in Resolution 1851 (2008). The application of the SUA Convention to acts of piracy has, however, also been subject to some criticism „as not reflecting sound legal policy“ because piracy and maritime terrorism are different offenses and are also subject to different jurisdictional rules – universal jurisdiction in the first case and multiple jurisdiction in the second.

The Austrian Law on Maritime Shipping of 1981, also referring to several provisions of the Austrian Penal Code, contains some specific provisions dealing with piracy. Section 45(1) of that Law provides that whoever uses force or makes dangerous threats against a person in order to gain control over a seagoing vessel, its cargo or a person aboard, is liable to imprisonment from one to ten years, if such act is not subject to more severe punishment according to another provision (of criminal law). Section 45(2) further provides for imprisonment from five to fifteen years if the act committed has led to the death of a person or to severe bodily injuries of a larger number of persons; if such act has led to the death of a larger number of persons, the punishment is imprisonment from ten to twenty years or for life. Section 46 furthermore provides that whoever equips, leads or serves on a seagoing vessel that is destined for piracy is liable to imprisonment from six months to five years. The reasoning behind this latter provision is to already criminalize certain acts of preparation of piratical activities, although with lower penalties.

4. Thus far no need has yet arisen in Austria to apply the afore-mentioned penal provisions. No agreement has been concluded under which persons accused of piracy or armed robbery at sea have been transferred to other countries with a view to prosecution. Austria highly welcomes the role of international, regional and subregional organisations regarding the prevention and repression of acts of piracy and armed robbery at sea and in particular wishes to highlight the continuing role of the IMO in this context. Besides clear international and domestic legal foundations and the deployment of naval units in regions most plagued by piracy and armed robbery at sea, the various efforts of intensified cooperation among states of the geographical areas most concerned are indispensable for the prevention and repression of piracy and armed robbery at sea.